

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

STATE OF TEXAS, TEXAS DEPARTMENT OF
FAMILY AND PROTECTIVE SERVICES,
CHILD PROTECTIVE SERVICES DIVISION

Defendant.

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CIVIL ACTION NO. 1:11-cv-469

COMPLAINT

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor, brings this action to enjoin Defendant State of Texas, Texas Department of Family and Protective Services, Child Protective Services Division (“CPS”) from violating the provisions of Sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., hereinafter referred to as the Act, and to restrain Defendant from withholding payment of overtime compensation found by the Court to be due employees under the Act, and an equal amount as liquidated damages due to the employees who are named in the attached Exhibit A.

I.

This Court has jurisdiction over this action pursuant to Sections 16 and 17 of the Act, 29 U.S.C. §§ 216 and 217, and 28 U.S.C. §§ 1331 and 1345.

II.

Defendant CPS is now, and at all times hereinafter mentioned was, a public agency with a place of business and doing business in Travis County at 701 W. 51st Street, Austin, Texas within the jurisdiction of this Court.

III.

At all times hereinafter mentioned, Defendant CPS has been a public agency within the meaning of Section 3(s)(1)(C) of the Act, 29 U.S.C. § 203(s)(1)(C).

IV.

1. Defendant is charged with investigating reports of child abuse and neglect for the State of Texas. It is also responsible for placing children in foster care or adoptive homes when needed. In addition, CPS provides home based services to families and aids those in foster care who are transitioning to adulthood.

2. Defendant employs groups of employees under the titles of CPS Investigator II through V, CPS Senior Investigator, CPS Specialist II through V, Faith Based CPS Specialist II through IV, and Kinship Caregiver CPS Specialist II (collectively, the “Employees”).

V.

During the period since at least June 8, 2008, Defendant has violated and are violating the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing Employees for workweeks longer than 40 hours without compensating such Employees for all their employment in excess of 40 hours per week at rates not less than one and one-half times the regular rates at which they were employed.

VI.

During the period since June 8, 2008, Defendant has violated and are violating the provisions of Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), in that Defendant has failed to make, keep and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations of the Administrator issued pursuant to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), and found in Title 29, Chapter VI, Code of Federal Regulations, Part 516 in that their records failed to show, among other things, all the hours worked each day and the total hours worked each week by many of their employees.

VII.

Defendant has willfully violated the Act. As a result of the violations of the Act, overtime compensation has been unlawfully withheld by the Defendant from their employees. A judgment enjoining the alleged violations and restraining the withholding of overtime compensation found to be due the employees is specifically authorized by Section 17 of the Act, 29 U.S.C. § 217.

VIII.

WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendant State of Texas, Texas Department of Family and Protective Services, Child Protective Services Division as follows:

1. For an Order pursuant to Section 17 of the Act permanently enjoining and restraining Defendant, its officers, agents, servants, employees, and those persons in active

concert or participation with Defendant, from violating Sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and

2. For an Order pursuant to Section 16(c) of the Act finding Defendant liable for unpaid overtime compensation due to Defendant's employees, and for liquidated damages equal in amount to the unpaid compensation found due Defendant's employees listed in the attached Exhibit A (additional liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this Complaint); or in the event liquidated damages are not awarded;

3. For an Order pursuant to Section 17 enjoining and restraining Defendant from withholding payment of overtime compensation found due Defendant's employees and pre-judgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621; and

4. For an Order awarding Plaintiff the costs of this action; and

5. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully Submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

MARGARET TERRY CRANFORD
Counsel for Wage and Hour

By:

/s/ TD Juarez
TINA D. JUAREZ
Trial Attorney
TX Bar No. 24027549
U.S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, TX 75202
(972) 850-3100
(972) 850-3101 (fax)
Email: juarez.tina@dol.gov

ATTORNEYS FOR PLAINTIFF